

## Message Text

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FM SECSTATE WASHDC

TO USMISSION GENEVA

S E C R E T STATE 129010

E.O. 11652: GDS

TAGS: PBOR, US

SUBJECT: SUMMER INSTRUCTIONS - LOS

FOR US SEABEDS DELEGATION

1. THE FOLLOWING MEMORANDUM HAS BEEN SENT TO THE PRESIDENT FROM MR. RUSH AS CHAIRMAN, NSC UNDERSECRETARIES COMMITTEE.

2. BEGIN TEXT. "THIS MEMORANDUM IS SUBMITTED PURSUANT TO YOUR REQUEST OF JUNE 22, 1973, FOR A REVIEW OF THE RECOMMENDED UNITED STATES POSITION TOGETHER WITH AGENCIES' COMMENTS RELATING THERETO WITH RESPECT TO THE JULY/AUGUST 1973 PREPARATORY MEETING FOR THE LAW OF THE SEA CONFERENCE WHICH COMMENCES JULY 2.

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"THE NSC LAW OF THE SEA TASK FORCE REPORT OF JUNE 1, 1973, WHICH CONTAINS RECOMMENDED INSTRUCTIONS FOR OUR DELEGATION, RECEIVED THE CONCURRENCE OF THE SECRETARY OF THE INTERIOR, THE ACTING SECRETARY OF DEFENSE (WHO ALSO

FORWARDED CONCURRENCE FOR THE JOINT CHIEFS OF STAFF), THE CHAIRMAN OF THE COUNCIL ON ENVIRONMENTAL QUALITY, THE ADMINISTRATOR OF THE NATIONAL OCEANOGRAPHIC AND ATMOSPHERIC ADMINISTRATION FOR THE DEPARTMENT OF COMMERCE, AS WELL AS THE DEPARTMENTS OF STATE AND TRANSPORTATION AND THE NATIONAL SCIENCE FOUNDATION.

"A MEMORANDUM OF JUNE 15, 1973, FROM THE DEPUTY SECRETARY OF THE TREASURY, HOWEVER, RECOMMENDED 'THAT THE INSTRUCTIONS OF THE DELEGATION AT THE UPCOMING SEABEDS COMMITTEE MEETING BE QUALIFIED' IN CERTAIN RESPECTS, AND SUGGESTED CONSIDERATION OF A 'SELECTIVE REVIEW OF THE ECONOMIC POLICY INTERESTS AFFECTED BY OUR LOS NEGOTIATING POSITION.' A MEMORANDUM REGARDING THE TREASURY COMMENTS WAS PREPARED BY THE AGENCIES CONCURRING IN THE TASK FORCE REPORT AND IS ATTACHED.

"WE SEE MERIT IN UNDERTAKING A SELECTIVE REVIEW OF ECONOMIC POLICY INTERESTS AS RECOMMENDED BY TREASURY IN ITS MEMORANDUM. AS CHAIRMAN OF THE UNDER SECRETARIES COMMITTEE, I HAVE DIRECTED THE LAW OF THE SEA TASK FORCE TO COMMENCE SUCH A REVIEW AS SOON AS POSSIBLE, WITH THE PARTICIPATION OF THE APPROPRIATE WHITE HOUSE OFFICES CONCERNED WITH DOMESTIC AND INTERNATIONAL ECONOMIC POLICY. THE RESULTS OF THE REVIEW WILL BE FORWARDED TO YOU WELL IN ADVANCE OF THE SANTIAGO CONFERENCE IN CONJUNCTION WITH THE PREPARATION OF RECOMMENDED INSTRUCTIONS FOR THE CONFERENCE.

"WE BELIEVE, HOWEVER, THAT IT IS UNDESIRABLE AND UNNECESSARY TO LIMIT THE UNITED STATES DELEGATION AT THE FORTHCOMING GENEVA MEETING TO EXPLORATORY ACTIVITIES AS SUGGESTED ON PAGE 6 OF THE TREASURY MEMORANDUM. TO SO LIMIT THE DELEGATION WOULD IN ALL PROBABILITY BE SEEN BY OTHER COUNTRIES AS A RETREAT FROM YOUR LONGSTANDING COMMITMENT TO HELP ESTABLISH A NEW AND ACCEPTABLE LAW OF  
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THE SEA THAT WOULD ACCOMMODATE THE BASIC INTERESTS OF ALL NATIONS. SUCH LIMITATION WOULD ALSO ENTAIL RISKS OF ERODING THE UNITED STATES BARGAINING POSITION ON IMPORTANT ISSUES NOT ADDRESSED BY TREASURY, PARTICULARLY THOSE TOUCHING ON OUR NATIONAL SECURITY, SINCE OTHER COUNTRIES CANNOT BE EXPECTED TO SUPPORT US ON SUCH ISSUES OF SPECIAL INTEREST TO US IF WE ARE UNWILLING TO CONTINUE ADDRESSING THE ECONOMIC ISSUES WHICH ARE OF CONCERN TO THEM. WHILE PAYING THIS VERY HIGH PRICE WE WOULD BE GAINING VIRTUALLY NOTHING. THE PRESENT NEGOTIATING CONTEXT IS SUCH THAT OUR ABILITY TO MODIFY OUR POSITIONS ON ECONOMIC ISSUES PRIOR TO THE SANTIAGO CONFERENCE WOULD NOT BE PREJUDICED BY PROCEEDING IN ACCORDANCE WITH THE PROPOSED INSTRUCTIONS.

"THE FACT THAT THE ABILITY TO MODIFY POSITIONS ON THE ISSUES OF PARTICULAR INTEREST TO TREASURY WILL NOT BE PREJUDICED BY PROCEEDING UNDER THE PROPOSED INSTRUCTIONS IS BEST ILLUSTRATED BY BRIEFLY REVIEWING EACH OF THE FOUR ISSUES RAISED BY THE TREASURY COMMENTS:

"1. WITH RESPECT TO REVENUE SHARING WE PRESENTED A PRECISE FIGURE IN OUR ORIGINAL DRAFT SEABEDS TREATY IN 1970, BUT WE HAVE SINCE THAT TIME TAKEN THE POSITION THAT THE AMOUNT OF THE OBLIGATION IS SUBJECT TO NEGOTIATION. IT SHOULD BE BORNE IN MIND THAT OUR PROPOSAL IS FOR AN OBLIGATION ON THE PART OF ALL COASTAL STATES TO SHARE SOME OF THE REVENUES DERIVED FROM THEIR CONTINENTAL MARGIN AND ACCORDINGLY IS NOT POPULAR WITH MOST OF THE COASTAL STATES IN THESE NEGOTIATIONS. AT THE SANTIAGO CONFERENCE WE WILL BE UNDER PRESSURE FROM THE MAJORITY EITHER TO ELIMINATE THE PROPOSAL ALTOGETHER OR TO REDUCE IT TO A VERY SMALL AMOUNT. THUS TO CONTINUE THE CURRENT POSTURE AS CONTEMPLATED BY THE PROPOSED INSTRUCTIONS LEAVES US COMPLETE FLEXIBILITY WITH RESPECT TO  
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THE FUTURE.

"2. AS FOR THE OTHER THREE INTERNATIONAL STANDARDS WHICH YOUR OCEANS POLICY SUGGESTS, AND ABOUT WHICH TREASURY HAS RAISED QUESTIONS, ONE--THE AVOIDANCE OF INTERFERENCE WITH NAVIGATION AND OTHER USES OF THE SEA -- IS ALREADY REQUIRED BY EXISTING LAW AND THE 1958 GENEVA CONVENTION ON THE CONTINENTAL SHELF. EVEN IF THE STUDY I HAVE DIRECTED WERE TO REACH NEGATIVE CONCLUSIONS ON THIS POINT, IT SHOULD BE NOTED THAT THE MAJORITY OF COASTAL STATES IN THE NEGOTIATIONS WOULD PREFER AS FEW RESTRAINTS AS POSSIBLE ON THE EXERCISE OF THEIR RESOURCE JURISDICTION, AND ACCORDINGLY WE WILL CONTINUE TO ENJOY FLEXIBILITY WITH RESPECT TO THIS ISSUE. THE SAME HOLDS TRUE WITH RESPECT TO THE OTHER TWO INTERNATIONAL STANDARDS IN QUESTION -- THE OBLIGATION TO OBSERVE MAXIMUM INTERNATIONAL ANTI-POLLUTION STANDARDS WITH RESPECT TO THE CONTINENTAL MARGIN, AND PROTECTION OF THE INTEGRITY OF FOREIGN INVESTMENT. IN BRIEF, SINCE NONE OF THE LIMITATIONS WE HAVE BEEN PROPOSING ON COASTAL STATE JURISDICTION OVER SEABED RESOURCES DURING THE PAST THREE YEARS OF NEGOTIATIONS IS POPULAR WITH THE MAJORITY OF COASTAL STATES INVOLVED, A FUTURE DECISION BY THE UNITED STATES TO WITHDRAW FROM ANY OF THESE POSITIONS WOULD DOUBTLESS BE WELCOMED BY MANY FOREIGN COUNTRIES AND WOULD BE EASILY NEGOTIATED.

"3. THE UNITED STATES PROPOSAL TABLED THREE YEARS AGO WITH RESPECT TO THE DEEP SEABEDS AND THE PROPOSED

INTERNATIONAL SEABED AUTHORITY ALREADY IS THE MOST CONSERVATIVE OF THE MANY PROPOSALS BEING CONSIDERED IN THE NEGOTIATIONS. IN PARTICULAR, WE ARE INSISTING UPON A VOTING MECHANISM IN THE COUNCIL OF THE AUTHORITY THAT WOULD PROTECT THE INTERESTS OF DEVELOPED STATES AND ARE VIGOROUSLY OPPOSING PROPOSALS THAT THE AUTHORITY, AND NOT STATES OR THEIR NATIONALS, BE THE ACTUAL EXPLORERS AND EXPLOITERS OF THE DEEP SEABEDS. ON THIS ISSUE WE MUST BE IN A POSITION TO ENSURE THAT THE DRAFTS FORWARDED TO THE SANTIAGO CONFERENCE CONTAIN ALTERNATIVE TEXTS AS NEARLY SATISFACTORY TO US AS POSSIBLE. ACCORDINGLY, ONLY BY NOT ABANDONING OUR EXISTING APPROACH CAN WE ENSURE THE SECRET

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PROTECTION OF THE OBJECTIVE WHICH ALL AGENCIES, INCLUDING TREASURY, SHARE, NAMELY THAT THE ULTIMATE REGIME PROVIDE REASONABLE AND SECURE INVESTMENT CONDITIONS, AND INCLUDE ADEQUATE VOTING ARRANGEMENTS. IN VIEW OF THE IDEOLOGICAL EFFECT OF THIS ISSUE ON THE DEVELOPING COUNTRIES, THE ONLY REALISTIC ALTERNATIVE WOULD BE TO ATTEMPT TO TERMINATE THE NEGOTIATIONS. WHILE THEY ARE OF GREAT IMPORTANCE WE DO NOT BELIEVE DEEP SEABED MANGANESE NODULE RESOURCES ARE OF SUCH OVERWHELMING IMPORTANCE TO THE UNITED STATES AS TO WARRANT SUCH ACTION AT THIS TIME IN VIEW OF OUR OTHER VERY SIGNIFICANT INTERESTS, BOTH MILITARY AND ECONOMIC, IN THE LAW OF THE SEA CONFERENCE. WE WILL REMAIN FREE TO DECIDE DIFFERENTLY IN THE FUTURE.

"4. THE TREASURY DEPARTMENT POSES THE QUESTION WHETHER UNITED STATES ADVOCACY OF THE HIGHEST POSSIBLE INTERNATIONAL ENVIRONMENT STANDARDS APPLICABLE TO VESSEL POLLUTION WILL NOT RESULT IN AN INCREASE IN SHIPPING COST THAT ADVERSELY AFFECTS OUR INTERESTS. OUR DIFFICULTY IN THE NEGOTIATIONS, HOWEVER, AND INDEED IN THE ABSENCE OF ANY NEGOTIATION, IS THAT MOST COASTAL STATES SEE BROAD POLLUTION CONTROL ZONES OFF THEIR COASTS AS A WAY TO PROTECT THEMSELVES FROM THE EFFECTS OF POLLUTION FROM VESSELS. WE DO NOT BELIEVE THIS WILL BE ENVIRONMENTALLY EFFECTIVE. MOREOVER, WE BELIEVE THAT THE RESULT WOULD BE SERIOUS ECONOMIC AND MILITARY DISADVANTAGES LEAVING US IN A POSITION INFERIOR TO WHAT WOULD PROBABLY RESULT FROM OUR CURRENT APPROACH. SINCE POLLUTION ARTICLES ARE NOW BEING ACTIVELY DRAFTED IN A WORKING GROUP IN THE SEABEDS COMMITTEE, AND SINCE THE PRECISE ISSUE OF COASTAL STATE

JURISDICTION IS LIKELY TO COME UP AGAIN AT THE VERY START OF THE GENEVA SESSION, UNITED STATES INACTION WILL AMOUNT TO A DECISION TO ACQUIESCE IN SUCH BROAD COASTAL STATE JURISDICTION. WE DO NOT ANTICIPATE THAT THIS ISSUE CAN OR WILL BE FINALLY RESOLVED IN GENEVA, AND THEREFORE WE WILL HAVE MORE THAN AMPLE FLEXIBILITY TO RETREAT FROM

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OUR CURRENT POSITION AT THE SANTIAGO CONFERENCE IF WE SO CHOOSE.

"IN SUMMARY, WE DO NOT EXPECT INTERNATIONAL AGREEMENT AT GENEVA ON ANY OF THE MAJOR ISSUES AND CERTAINLY NOT ON THOSE PROPOSALS WHICH THE TREASURY MEMORANDUM QUESTIONS. IT IS WIDELY EXPECTED THAT AN OVERALL NEGOTIATING PACKAGE CANNOT BE PUT TOGETHER BEFORE THE SANTIAGO CONFERENCE. WE RETAIN MAXIMUM FLEXIBILITY BY PURSUING OUR PRESENT COURSE. WE DO NOT IN ANY WAY PREJUDICE OUR FUTURE ABILITY TO REVISE THE POSITIONS QUESTIONED BY TREASURY. FAILURE TO PURSUE OUR PRESENT COURSE FROM THE VERY START OF THE GENEVA SESSION WOULD ENCOURAGE RESULTS WHICH ALL OTHER CONCERNED AGENCIES IN THE GOVERNMENT HAVE CONSISTENTLY BELIEVED NOT TO BE IN THE BEST INTEREST OF THE UNITED STATES. SUCH FAILURE COULD ALSO DAMAGE THE CREDIBILITY AND STATURE OF THE UNITED STATES IN THESE NEGOTIATIONS.

"I THEREFORE RECOMMEND THAT THE PROPOSED INSTRUCTIONS FOR THE DELEGATION EMBODIED IN THE TASK FORCE REPORT BE APPROVED, ON THE UNDERSTANDING THAT THE STUDIES REQUESTED BY TREASURY WILL BE INITIATED AS SOON AS POSSIBLE, AND THAT DUE WEIGHT WILL CONTINUE TO BE GIVEN TREASURY'S VIEWS AS WE APPROACH THE TASK OF FORMULATING A US GOVERNMENT POSITION FOR THE SANTIAGO CONFERENCE." END TEXT. ROGERS

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